

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

VIRGIN MOBILE USA, L.P.

**Application for Limited Designation as a
Wireless Eligible Telecommunications
Carrier**

Docket No. 14-0475

**INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION**

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January 14, 2015

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The Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned attorneys and pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission”), 83 Ill. Adm. Code 200.800, respectfully submit their Initial Brief (“IB”) in the above-noted proceeding.

I. INTRODUCTION

On July 23, 2014, Virgin Mobile USA, L.P. (“Virgin Mobile”) filed its *Petition of Virgin Mobile USA, L.P. for Limited Designation as a Wireless Eligible Telecommunications Carrier* (“Application or Petition”) requesting designation as a Wireless Eligible Telecommunications Carrier (“ETC”) under Section 214(e)(2) of the Federal Telecommunications Act of 1996 (“1996 Act”), 47 U.S.C. § 214(e)(2), and Section 54.201(c) of the Rules of the Federal Communications Commission (“FCC”), 47 C.F.R. § 54.201(c). (See *generally*, Petition.) Virgin Mobile witness James R. Burt filed direct testimony (Virgin Mobile Exs. 1.0 through 1.5) and rebuttal testimony (Virgin Mobile Exs.

2.0 through 2.1, Virgin Mobile Amended Exhibit 2.2) in this proceeding.¹ Staff witness Dr. James Zolnierrek filed direct testimony (Staff Ex. 1.0) and rebuttal testimony (Staff Ex. 2.0).² On December 17, 2014, an evidentiary hearing was conducted in the Commission's Chicago office and the record was marked Heard and Taken. (Tr. 24:4-14, Dec. 17, 2014.) Pursuant to the briefing schedule set at the December 17, 2014 hearing, this IB follows. (Tr. 23:13-18, Dec. 17, 2014.)

II. LEGAL STANDARDS

A. Authority under the 1996 Act

Pursuant to the 1996 Act, state commissions are assigned the task of designating common carriers subject to their jurisdiction as eligible to receive federal Universal Service Fund ("USF") support. 47 U.S.C. §214(e)(2). Supported services are defined by the FCC as voice telephony services that:

provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

47 C.F.R. §54.101(a). ETCs are required to offer voice telephony service in order to receive federal USF support. 47 C.F.R. §54.101(b).

¹ Virgin Mobile Ex. 1.0 through 1.5 were filed on September 16, 2014, Ex. 2.0 through 2.1 were filed on November 12, 2014 and Amended Ex. 2.2 was filed on December 17, 2014.

² Staff Ex. 1.0 and 2.0 were filed on October 8, 2014 and December 3, 2014, respectively.

The 1996 Act includes specific requirements that carriers must meet in order to be designated as ETCs and that state commissions must follow in designating carriers as ETCs. In particular, the 1996 Act states:

214(e) PROVISION OF UNIVERSAL SERVICE.--

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with Section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges there for using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.-- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. §214(e)(1); 47 U.S.C. §214(e)(2).

While Section 214(e)(1)(A) of the 1996 Act states that ETCs must provide supported services over their own facilities, in whole or in part, throughout the designated areas, the FCC has found that the use of their own facilities is unnecessary for Lifeline-only ETCs and has granted blanket forbearance from the facilities requirement of Section 214(e)(1)(A) for carriers seeking Lifeline-only ETC designation. The FCC conditioned the

grant of this forbearance on a carrier's compliance with certain 9-1-1 requirements and the FCC's approval of a forbearance related compliance plan. *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, 2012 WL 387742 (FCC 12-11), ¶368 (Feb. 6, 2012) ("Lifeline Reform Order"). Therefore, ETCs must provide services, in whole or in part, over their own facilities unless they have obtained FCC approval of a forbearance related compliance plan and additionally meet the FCC's forbearance-related 9-1-1 requirements.

Section 214(e)(1) also requires that an ETC offer the services that are supported by Federal universal service support mechanisms under Section 254(c) as well as advertise the availability of such services and the charges therefore using media of general distribution throughout their designated areas.

Carriers must further meet requirements prescribed by the FCC for ETC designation under Section 214(e)(2) and all additional requirements the Commission deems appropriate and reasonable to ensure that an ETC designation is consistent with the public interest, convenience, and necessity. *In the Matter of Federal-State Joint Bd. On Universal Service, Highland Cellular, Inc.*, 2004 WL 770088 (FCC 04-37), ¶21 (Apr. 12, 2004) ("Highland Cellular ETC Order").

B. Service Area

The 1996 Act provides for how a service area should be determined for the purpose of ETC designation:

214(e)(5) SERVICE AREA DEFINED.--The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the

case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

47 U.S.C. §214(e)(5).

For an area served by a non-rural carrier, a service area is the geographic area established by the Commission. For an area served by a rural telephone company, a service area is the rural telephone company's study area, unless redefined by the FCC and the Commission. 47 U.S.C. §214(e)(5).

Recently, the FCC found that Lifeline-only ETCs no longer needed to conform their service areas to study areas when serving in areas served by rural telephone companies, and granted forbearance for carriers seeking Lifeline-only ETC designation from this requirement:

We conclude that forbearing from the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is appropriate and in the public interest for carriers seeking designation, or already designated, as Lifeline-only ETCs. For the reasons explained below, we find that all three prongs of section 10(a) are satisfied. As a result, if a commission designates a carrier as a limited, Lifeline-only ETC in part of a rural service area, that designation will not require redefinition of the rural telephone company's service area. Because forbearance would apply only to designations for the purpose of becoming a limited ETC to participate in the Commission's Lifeline program, we examine the conformance requirement in light of the statutory goal of providing low-income consumers with access to telecommunications services as it relates to the Commission's Lifeline program.

In the Matter of Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform, Virgin Mobile USA , L.P. Petition for Forbearance, Cox Communications, Inc. Petition for Forbearance, Time Warner Cable, Inc. Petition for Forbearance, i-wireless, LLC, Petition for Forbearance, Q Link Wireless, LLC Petition for Forbearance, Global Connection Inc. of America Petition for Forbearance, 2013 WL 1641178 (FCC 13-44), ¶8

(Apr. 15, 2013) (“Virgin Mobile *et al.* Forbearance Order”). Through this forbearance, the FCC eliminated the distinction between rural and non-rural areas for the purpose of defining service areas for Lifeline-only ETCs.

C. FCC Requirements for ETC Designation

Where carriers seeking ETC designation are not subject to the jurisdiction of state commissions, the FCC is responsible for ETC designation. 47 U.S.C. §214(e)(6). There are two general types of requirements that the FCC imposes upon carriers seeking ETC designation: (1) requirements imposed on carriers seeking designation from the FCC when the FCC is performing the ETC designation; and (2) requirements imposed on all carriers seeking designation (whether from the FCC or a state commission).

The FCC’s requirements for its own evaluations are contained in Section 54.202 of the rules of the FCC as well as its ETC Orders. 47 C.F.R. §54.202; *In the Matter of Federal-State Joint Bd. On Universal Service*, 2005 WL 646635 (FCC 05-46) (Apr. 21, 2005) (“ETC Order”); *Lifeline Reform Order*. Although the requirements of Section 54.202 of the rules of the FCC and determinations that the FCC makes under Section 214(e)(6) are not binding on state commissions, the FCC encourages states to apply those requirements to state ETC designation. ETC Order, ¶¶19-20.

The FCC also prescribes requirements that all designated ETCs must meet and that all state commissions must follow when designating ETCs. These requirements, which are also found in the rules of the FCC as well as its ETC Orders, are binding on state commissions. 47 C.F.R. §54.201(h); *In the Matter of Federal-State Joint Bd. On Universal Service*, 2005 WL 646635 (FCC 05-46) (Apr. 21, 2005) (“ETC Order”); *Lifeline Reform Order*.

D. ICC Requirements for ETC Designation

The Commission has rules that apply to ETCs in Illinois, including those in Part 736 (Consumer Protection and Service Quality Standards) (83 Ill. Adm. Code 736.100, *et seq.*) and those in Part 757 (Telephone Assistance Programs) (83 Ill. Adm. Code 757.100, *et seq.*). In addition to the requirements imposed upon ETCs by the Commission's rules, the Commission has imposed upon ETCs, as conditions of ETC designation, requirements that ensure that ETC designation is consistent with the statutory requirements for ETC designation, including that the designation is consistent with the public interest, convenience, and necessity. These requirements have been imposed on a case-by-case basis. *See, e.g., i-wireless, LLC d/b/a K-Wireless, LLC d/b/a Access Wireless*, ICC Order Docket No. 11-0073 (Apr. 15, 2011) and *American Broadband and Telecommunications Co.*, ICC Order Docket No. 12-0680 (Feb. 5, 2014),

E. Burden of Proof

The FCC has concluded the following concerning an ETC applicant's burden of proof:

In determining whether an ETC has satisfied these criteria [the factors weighed in analyzing the public interest ramifications], the Commission [FCC] places the burden of proof upon the ETC applicant. (Illustration added).

ETC Order, ¶44. The Commission should, consistent with this FCC finding, determine that the burden of proof is on Virgin Mobile in this proceeding to demonstrate that it meets the requirements to be an ETC in Illinois.

In addition, in ETC cases, it is the Company that possesses, and sometimes alone possesses, the information necessary to make designation determinations. (Staff Ex. 1.0, 10:215-216.) Therefore, as a practical matter, placing the burden of proof on Virgin

Mobile to demonstrate that its designation as an ETC is consistent with the public interest, convenience, and necessity, is the only way to ensure that all ETC requirements, including concrete public interest benefits, are met. *Id.* 10:217-220.

III. Staff Recommended Requirements for ETC Designation

A. Service Area

The Commission has, in the past, relied upon both exchange-based and non-exchange-based ETC service area definitions. *Illinois Bell Telephone Co. (Ameritech Illinois)*, ICC Order Docket No. 97-0507 (Dec. 17, 1997). There are advantages to defining ETC service areas in terms of exchanges as opposed to alternative definitions such as wire centers and ZIP codes, which render exchange-based definitions most reasonable and appropriate. Exchanges constitute telecommunications industry standard geographic units that all carriers rely upon, not just ILECs. For example, telephone number blocks are assigned to carriers of all types (ILEC, CLEC, wireless, etc.) by exchange. (Staff Ex. 1.0, 13:272-275.) More importantly, the Commission retains control over exchange boundaries, in particular, over proposed changes to exchange boundaries. 83 Ill. Adm. Code 732.711. As a result, defining an ETC's service area in terms of exchanges offers the Commission certainty as to the actual geographical area included within the ETC's service area, but also gives the Commission control over any proposed change to such ETC service area.

B. Ability to Provide Service Throughout the ETC Service Area

The Commission should require Virgin Mobile to provide the Commission evidence that it can provide service, using its own facilities, to all portions of the exchanges it proposes to include in its ETC service area. (Staff Ex. 1.0, 14:298-303.)

If a carrier is a reseller, then it should provide evidence that it has contracted with its underlying provider or providers in a manner that allows it to provide service in all portions of the identified exchanges in its ETC service area. A reseller should also provide evidence that it has an approved FCC compliance plan as required to exercise the FCC's grant of forbearance from the facilities based requirements of the statute with respect to its prospective ETC operations in Illinois. Additionally, a reseller carrier should produce information on the wholesale services that it will resell that shows where the carrier is capable of providing resold service.

C. Ability to Advertise Service Throughout the ETC Service Area

The Commission should require Virgin Mobile to supply information demonstrating the material and other forms of advertising it will rely upon and use throughout the service area for which designation is sought. (Staff Ex. 1.0, 15:331-333.)

D. Requirements Recommended by the FCC

The FCC requires that a carrier seeking designation as a Lifeline ETC from the FCC under Section 214(e)(6) must, in its application: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer protection and service quality standards; and (4) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. 47 C.F.R. § 54.202(a).

The FCC requires that ETCs designated pursuant to Section 214(e)(6) meet the reporting requirements of Section 54.422(b) regarding the carriers' ability to remain

functional in an emergency situation and maintain service quality. 47 C.F.R §54.422(b); ETC Order, ¶¶69; Lifeline Reform Order, ¶¶389. The FCC also requires carriers it designates to file annual reports showing the number of subscribers de-enrolled for non-usage and annual outage and general quality of service information. 47 C.F.R. § 54.405(e)(3); 47 C.F.R. § 54.422(b).

As noted above, the FCC encourages state commissions to impose identical requirements upon ETCs they designate. ETC Order, ¶¶19-20. The Commission should impose these FCC requirements, which the FCC prescribes for ETC designation under Section 214(e)(6), on Virgin Mobile.

E. Requirements Mandated by the FCC

Pursuant to FCC rules, ETCs providing Lifeline service must “pass through the full amount of support to the qualifying low-income consumer.” 47 C.F.R. § 54.403(a)(1). The Commission should require Virgin Mobile to demonstrate that its Lifeline service rate represents a dollar-for dollar-reduction from its comparable non-Lifeline rate and that it represents a pass-through of the full amount of support to the qualifying low-income consumer.

The FCC requires state commissions to impose a financial and technical capability requirement on carriers seeking designation as Lifeline ETCs. Lifeline Reform Order, ¶¶387; 47 CFR §54.201(h). State commissions are explicitly prohibited from granting such designation until the applicants have made such showings. 47 CFR §54.201(h). The Commission should, therefore, require Virgin Mobile to demonstrate that it possesses the necessary financial and technical capability to provide service for which it seeks designation.

The FCC prescribed a framework for the Commission to perform financial and technical capability analyses:

Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.

Lifeline Reform Order, ¶388. The FCC referred to the considerations listed above as among the relevant considerations, rather than an exhaustive list of the relevant considerations, to be included in the financial and technical capability analyses. Accordingly, the Commission may consider such additional matters that it deems appropriate and reasonable for its Illinois financial and technical capability determination.

In order to assess Virgin Mobile's financial capability, the Commission should evaluate the company's financial statements. In addition, Virgin Mobile should demonstrate that it has experience legitimately and profitably providing service. Optimally, because market conditions, regulations, and other factors differ across states, ETC applicants should be evaluated based upon their service records in Illinois. (Staff Ex. 1.0, 19:412-414.) ETC applicants should demonstrate a record based upon no less than 6 months of providing Illinois non-Lifeline service of the same type that it plans to provide to Lifeline customers. *Id.*, 19:414-417. If an ETC applicant has no service record in Illinois, then it should rely on its own record of comparable services outside of Illinois and should, again, demonstrate a record based upon no less than 6 months of service. *Id.*, 19-20:417-420.

An ETC applicant should provide evidence that it has developed a business case to serve such markets which does not rely critically on Lifeline subsidies, and, thus, that

it is less inclined to risk being cited for non-compliance with the rules governing the program. *Id.*, 20:420-423. To provide evidence that it has a business case to serve such markets (that does not rely critically on Lifeline subsidies), in states where the ETC applicant provides Lifeline service, it should demonstrate that the fraction of non-Lifeline wireless to total (both Lifeline and non-Lifeline) wireless customers has not fallen below 20% in each state each month in the period beginning six months prior to submission of the ETC petition. *Id.*, 20:424-429. If the ETC applicant's record of service is insufficient (e.g., no prior record of service, no history of non-lifeline service, etc.), the Commission should not designate it as an ETC until such time as it demonstrates an ability to serve the Illinois market (without relying critically on Lifeline subsidies). *Id.*, 20:430-433. In the latter case, the Commission should determine that the ETC applicant cannot begin to provide Lifeline service in Illinois until such time as it has established a six-month record of providing non-Lifeline service in Illinois, has supplemented the record in this proceeding to reflect this service period, and has received specific approval from the Commission to commence Lifeline service. *Id.*, 20:433-438.

If the ETC applicant has only a limited track record of service provision, the Commission should also ensure that, going forward, it does not revert to a business plan that relies primarily on Lifeline service. (Staff Ex. 1.0, 20:439-441.) In order to provide such assurance in such circumstances, the Commission should require an ETC applicant to provide the same service it provides to Lifeline customers to non-Lifeline customers in Illinois and require that if the fraction of non-Lifeline wireless to total (both Lifeline and non-Lifeline) wireless customers in Illinois falls below 20% for any three consecutive months, it should cease enrolling new customers in its wireless Lifeline program and not

resume enrolling new customers in the program until such time as it seeks and obtains approval from the Commission to resume offering wireless Lifeline service to new customers. *Id.*, 20:441-449.

Consistent with the FCC guidance cited above, these criteria and requirements will provide some assurance that Virgin Mobile will have the financial wherewithal to provide wireless service in Illinois without relying critically on Lifeline receipts and will, therefore, be less inclined to risk engaging in waste, fraud, or abuse of the Lifeline program as a means of remaining solvent.

In order to assess Virgin Mobile's technical capability, the Commission should review the experience and backgrounds of its personnel. (Staff Ex. 1.0, 21:457.) In addition, Virgin Mobile should not have or had any enforcement actions or ETC revocation proceedings against it in any states and have been subject to action as a result. *Id.*, 21:458-460. If Virgin Mobile did have enforcement actions or ETC revocation proceedings against it, and has been subject to action, it should produce documentation associated with the enforcement action and/or revocation proceeding showing that it has remedied any compliance failings and that it has operated in a compliant manner for at least 6 months prior to the submission of its ETC application. *Id.*, 21-22:460-464. Similarly, Virgin Mobile should demonstrate that it has the ability to comply with all applicable laws, rules and FCC/ICC requirements. *Id.*, 22:465-466.

Additionally, the FCC requires all (FCC -- as well as state-designated) ETCs to comply with: the National Lifeline Accountability Database procedures for detection and prevention of duplicative support; marketing, disclosure and de-enrollment requirements; subscriber eligibility determination/certification and annual recertification requirements;

annual carrier certification requirements; record keeping requirements; audit requirements; and carrier annual reporting requirements. 47 C.F.R. § 54.404(b); 47 C.F.R. § 54.405; 47 C.F.R. § 54.410; 47 C.F.R. § 54.416; 47 C.F.R. § 54.417; 47 C.F.R. § 54.420; and 47 C.F.R. § 54.422(a). Virgin Mobile should comply with each of these FCC mandated requirements.

F. E9-1-1 Surcharge Obligations

The importance of the wireless E9-1-1 system to the preservation of public safety and health cannot be overstated, and thus funding of the system is crucial. (Staff Ex. 1.0, 23:501-502.) From a public policy prospective, all carriers that provide E9-1-1-capable wireless service have the obligation to pay their respective shares of the costs of funding the wireless E9-1-1 system. *Id.*, 23-24:502-505. A carrier that does not pay, or does not pay the full and correct amounts of, wireless E9-1-1 surcharges, increases its profitability at the expense of the Illinois wireless E9-1-1 system and the public safety and health. *Id.*, 24:505-507.

There are two statutes in Illinois governing wireless carriers' E9-1-1 surcharge obligations: the Wireless Emergency Telephone Safety Act ("WETSA"), 50 ILCS 751, and the Prepaid Wireless 9-1-1 Surcharge Act ("PW9SA"), 50 ILCS 753. Section 17 of the WETSA requires each wireless carrier to impose and remit a wireless E9-1-1 surcharge. 50 ILCS 751/17. Carriers providing wireless telecommunications service pay WETSA on a subscription basis. *Id.* The PW9SA is designed to ensure that the funding for the wireless emergency system is maintained with equitable contribution from customers of prepaid wireless telecommunications services, not solely relying on contributions from customers of wireless telecommunications service on subscription plans. 50 ILCS 753/5.

The PW9SA imposes on sellers of prepaid wireless telecommunications service, as the term is used in the PW9SA, the duty to collect wireless E9-1-1 surcharges from buyers of such service at the point of sale. *Id.* The prepaid wireless E9-1-1 surcharge amount is on retail transactions at the point of sale.

Virgin Mobile should, in order to show its technical capability, demonstrate that it will comply with wireless E9-1-1 surcharges obligations by showing how much it has and/or expects to contribute per customer per month in E9-1-1 surcharges for its Lifeline customers. (Staff Ex. 1.0, 22:469-471.)

G. Consumer Protection and Service Quality Requirements

Virgin Mobile must comply with the rules of the Commission pertaining to Consumer Protection and Service Quality Standards. 83 Ill. Adm. Code 736.100, *et seq.* These rules establish the service quality and customer protection standards that all wireless ETCs must comply with, including compliance with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

Virgin Mobile must also comply with the rules of the Commission pertaining to Telephone Assistance Programs. 83 Ill. Adm. Code 757.10, *et seq.* These rules require ETCs to, among other things, regularly report to the Commission information on the number of Lifeline customers served.

H. Public Interest, Convenience and Necessity

Section 214(e)(2) of the 1996 Act requires that, before designating a carrier as an ETC, the Commission must find such designation consistent with the public interest, convenience, and necessity. *See, In the Matter of Federal-State Joint Bd. On Universal Service, Petitions for Reconsideration of Virginia Cellular, LLC and Highland Cellular, Inc.*

Designations as Eligible Telecommunications Carriers in the Commonwealth of Virginia, 2012 WL 5915529 (FCC 12-141), ¶5 (Nov. 26, 2012). The 1996 Act did not define these terms. Nor did the FCC prescribe specific criteria to be applied to the public interest analyses under Section 214(e)(2). The FCC has specified that state commissions should exercise discretion, considering local factual situations, in performing public interest analyses of ETC designation under Section 214(e)(2), consistent with federal and state laws. ETC Order, ¶61. The Commission's public interest analysis of ETC designation should consider the benefits and costs resulting from an additional designation in Illinois. (Staff Ex. 1.0, 26:551-552.)

Additionally, to ensure that Virgin Mobile complies with its ETC obligations and that designation is and remains consistent with the public interest, convenience, and necessity, the Commission should require Virgin Mobile to submit, on a quarterly basis and within 30 days after the end of each calendar quarter, a Wireless Customer Report providing by month:

- The number of wireless customers;
- The number of wireless non-Lifeline customers;
- The number of wireless Lifeline customers; and
- The wireless non-Lifeline fraction of total wireless customers.

(Staff Ex. 1.0, 28:600-606.)

The Commission should also require the Virgin Mobile to submit, on a quarterly basis and within 30 days after the end of each calendar quarter, the following information:

- The total dollar value of wireless E9-1-1 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to WETSA; and
- The total dollar value of wireless E9-1-1 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to PW9SA.

(Staff Ex. 1.0, 28-29: 608-618.)

IV. VIRGIN MOBILE'S APPLICATION AND EVIDENCE

A. Service Area

In its Petition, Virgin Mobile provided both a list of wire centers which could define its proposed ETC service area or, in the alternative, a list of exchanges that would define its ETC service area. (Petition, 8, Ex. B-1, B-2.) Virgin Mobile subsequently withdrew its request to define its ETC service area by wire center. (Virgin Mobile Ex. 2.0, 3:15-17.) Virgin Mobile subsequently clarified that it proposes to include in its designated service area only the portions of exchanges identified in Virgin Mobile Exhibit 2.1 that are within the Sprint Coverage Areas (the green shaded areas in Virgin Mobile Amended Exhibit 2.2). (Staff Cross Ex. 1.0.) Thus, Virgin Mobile proposes a custom service area definition that does not follow either exchanges or wire centers, but rather is defined by the contours of the Sprint network coverage area.

The Virgin Mobile definition, in contrast to definitions which rely upon potentially mutable geographical definitions like wire centers, is a fixed and explicit definition. Further, Virgin Mobile has provided an example of how a customer can determine, based upon his/her address and the information provided in this proceeding by Virgin Mobile, whether or not the customer's home is within the Virgin Mobile ETC service area. (Staff Cross Ex. 2.0.) Therefore, based upon the evidence presented by Virgin Mobile, Staff recommends the Commission find that Virgin Mobile has adequately and appropriately defined its proposed ETC service area.

B. Ability to Provide Service Throughout the ETC Service Area

Virgin Mobile is a wholly owned subsidiary of Sprint. (Petition, 2.) Virgin Mobile will offer service using the Sprint network and the FCC has found that Virgin Mobile owns Sprint facilities for purposes of the facilities requirement in the federal statutes. *Id.*, 10-11. Thus, Virgin Mobile has demonstrated its capability to provide service throughout the Sprint service area, which mirrors its proposed ETC service area.

Notably, Virgin Mobile has further pledged:

Should a customer be dissatisfied with the strength of the wireless signal received either at the home address or otherwise, the customer can contact Customer Care to voluntarily de-enroll from Lifeline service with Virgin Mobile and keep the handset at any time without charge or penalty. If the customer deactivates service, Virgin Mobile will not report the customer as an active account and will not receive reimbursement from the Federal Universal Service Fund for that customer. Virgin Mobile has agreed to Staff's proposed condition 8 (See ICC Staff Ex. 1.0, p. 37) where it will file reports in this docket on the dates it files such reports with the FCC copies of any and all annual reports showing the number of subscribers de-enrolled for non-usage that it files with the FCC. Furthermore, Virgin Mobile has agreed to Staff's proposed condition 6 (See ICC Staff Ex. 1.0, p. 37) where it agrees to file all denials of Lifeline service requests from eligible customers in its designated ETC service area within 30 days of the denial of service.

(Staff Cross Ex. 1.0.)

C. Ability to Advertise Service Throughout the ETC Service Area

Virgin Mobile commits to advertising the availability and rates for its Lifeline services in media of general distribution, including newspapers, radio, and television, through direct mail and shared mail campaigns, and through brochures and posters distributed at various state and local social service agencies. (Petition, 13.)

D. Requirements Recommended by the FCC

Virgin Mobile has certified that it will comply with the service requirements applicable to the support that it receives; demonstrated its ability to remain functional in emergency situations; pledged to satisfy applicable consumer protection and service quality standards; and submitted information describing the terms and conditions of the voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. (Petition, 19-21.)

Virgin Mobile has also committed to meet the reporting requirements of Section 54.422(b) regarding the carriers' ability to remain functional in an emergency situation and maintain service quality and to file in this docket annual reports showing the number of subscribers de-enrolled for non-usage and annual outage and general quality of service information. (Petition, 22-23.)

E. Requirements Mandated by the FCC

Virgin Mobile has provided evidence that it will pass through the full amount of support to the qualifying low-income consumer. (Staff Ex. 1.0, Attachment A, 2.)

Virgin Mobile has provided access to financial statements that are consistent with its assertion that it is financially able to offer supported services. (Staff Ex. 1.0, 33-34:712-714.) In addition, the Company has demonstrated that it has experience legitimately and profitably providing service. In particular, Virgin Mobile has provided evidence showing that it has provided prepaid wireless telecommunications services to hundreds of thousands of customers in Illinois for multiple years and that it has not been critically

dependent on its Lifeline revenues. (Staff Ex. 1.0, Attachment A, 3-12.) It has also provided evidence that, in other states in which it has been designated as a wireless ETC, it is not critically dependent on Lifeline revenues. (Staff Ex. 1.0, 33:705-709.) Virgin Mobile has provided evidence consistent with the conclusion that it is both financially and technically able to provide wireless Lifeline service in Illinois and that additional requirements proposed by Staff with respect to prospective ETCs with no Illinois experience and/or a limited track record of service are unnecessary.

As noted above, in addition to demonstrating it will pass through the full amount of support to the qualifying low-income consumer and proving its technical and financial capability, the FCC requires all (FCC -- as well as state-designated) ETCs to comply with: the National Lifeline Accountability Database procedures for detection and prevention of duplicative support; marketing, disclosure and de-enrollment requirements; subscriber eligibility determination/certification and annual recertification requirements; annual carrier certification requirements; record keeping requirements; audit requirements; and carrier annual reporting requirements.

In its Petition, Virgin Mobile commits to participate in the federal NLAD and Illinois state-based Lifeline subscriber duplicate data databases. (Petition, 23.) It commits to comply with all of the FCC's rules regarding advertising of Lifeline services and to file, in this docket, annual reports showing the number of subscribers de-enrolled for non-usage. (Petition, 13, 14, and 23) Virgin Mobile has provided evidence that it has implemented specific procedures to comply with the customer certification and verification requirements. (Petition, 22.) It has committed to filing, within this proceeding, a copy of the audit report produced as a result of FCC requirements. *Id.* Virgin Mobile has

committed to meeting annual reporting requirements and to file copies with the Commission. *Id.* The Company has further committed to meeting all federal rules affecting Lifeline ETC status and obligations. (Virgin Mobile Ex. 2.0, 6:22, 7:1-2.)

F. E9-1-1 Surcharge Obligations

Virgin Mobile has indicated that it will not remit wireless E9-1-1 surcharges for its wireless Lifeline customers. (Virgin Mobile Ex. 2.0, 4:10-21.). Virgin Mobile has presented testimony arguing that it is not required to pay such surcharges. *Id.* It has also suggested that making Virgin Mobile pay E9-1-1 surcharges could be discriminatory if others are not paying such surcharges. *Id.*, 5:3-7. Finally, it has asserted that with respect to a free-to-the-customer Lifeline service, it would be required to pay for E9-1-1 surcharges from its federal reimbursement. *Id.*, 5:7-10.

As explained above, the importance of the wireless E9-1-1 system to the preservation of public safety and health cannot be overstated, and thus funding of the system is crucial. A carrier that does not pay, or does not pay the full and correct amounts of, wireless E9-1-1 surcharges, neglects such payments at the expense of the Illinois wireless E9-1-1 system and to the detriment of the public safety and health.

Virgin Mobile presents no evidence that other ETC providers are not paying E9-1-1 surcharges with respect to their Lifeline customers. (Staff Ex. 1.0, 7:156-157.) Even assuming *arguendo* that this were the case, the failure of other carriers to meet their E9-1-1 obligations does not excuse Virgin Mobile from doing so. American Broadband has committed within its ETC proceeding to remit E9-1-1 surcharges with respect to its prepaid wireless base Lifeline offerings. (Staff Ex. 2.0, 8: 164-166.)

The manner in which Virgin Mobile has elected to structure its charges for its Lifeline service should also not excuse Virgin Mobile from complying with its E9-1-1 obligations. There is nothing in any rule or regulation that requires Virgin Mobile to assess rates to its customers that exclude recovery of E-9-1-1 surcharges from such customers. The fact that Virgin Mobile has elected, of its own volition, to design its Lifeline rates so that they do not recover E-9-1-1 surcharges does not excuse Virgin Mobile from its E-9-1-1 surcharge obligations.

With respect to Virgin Mobile's reading of the Illinois E-9-1-1 statutes, and PW9SA in particular, Virgin Mobile's assertion that it is not required by law to pay E9-1-1 surcharges is unconvincing. Its potential failure to meet its E-9-1-1 requirements signifies a shortcoming in Virgin Mobile's technical capability to comply with rules and regulations applicable to its service offering. It also suggests, given the importance of the wireless E9-1-1 system to the preservation of public safety and health, Virgin Mobile's designation is not in the public interest.

While Staff raises these serious concerns with Virgin Mobile's proposed service offering, it notes that the Commission need not interpret the PW9SA in order to resolve this matter. Implementation of the PW9SA is the responsibility of the Illinois Department of Revenue. Instead of relying on Virgin Mobile's unilateral interpretation of PW9SA, and running the risk that Virgin Mobile will operate its Lifeline program at the expense of the Illinois wireless E9-1-1 system and the detriment of the public safety and health, the Staff proposes the following solution:

Virgin Mobile should, within 30 days of designation, request guidance/clarification from the Illinois Department of Revenue regarding whether it is required to remit surcharges pursuant to PW9SA with respect to its Lifeline customers subscribing to Virgin Mobile's primary Lifeline

service package. Virgin Mobile should report any guidance/clarification received in response to this request, within this docket, within 5 days of receipt of such guidance/clarification. Virgin Mobile should comply with any such guidance/clarification.

(Staff Ex. 1.0, 37: 783-791.)

G. Consumer Protection and Service Quality Requirements

Virgin Mobile commits to complying with the Commission's Consumer Protection and Service Quality Standards rules. (Petition, 23-24).

Virgin Mobile commits to complying with the Commission's Telephone Assistance Programs rules. *Id.*

H. Public Interest, Convenience and Necessity

Virgin Mobile has provided evidence that its Lifeline rates are comparable to other large national wireless Lifeline providers. (Staff Ex. 1.0, Attachment A, 15.) Virgin Mobile's history of non-Lifeline service in Illinois significantly reduces concerns that it will rely critically on Lifeline service revenues and that it will face incentives to engage in waste, fraud, or abuse of the Lifeline program. (Staff Ex. 1.0, 36:763-766.) It also establishes that designating Virgin Mobile as an ETC will provide customers the option to take Lifeline service from a proven wireless provider. *Id.*, 36:766-768. Thus, the expected benefits of designating Virgin Mobile as a wireless ETC outweigh the expected costs. *Id.*, 36:768-770.

Virgin Mobile further commits to providing a Wireless Customer Report and reports detailing its E-9-1-1 contributions to the Commission each quarter. (Virgin Mobile Ex. 2.0, 6:22, 7:1-2.)

Finally, to the extent it did not otherwise do so, the Commission should require Virgin Mobile to comply with the following conditions recommended by Staff:

1. Virgin Mobile should comply with all applicable federal and state statutes and rules affecting Lifeline ETC status and obligations;
2. Virgin Mobile should comply with all commitments made in its Petition;
3. Virgin Mobile should comply with the commitments included in its FCC approved compliance plan;
4. Virgin Mobile should report, within this docket, all denials of Lifeline service requests from eligible customers in its designated ETC service area within thirty (30) days of such denial of service. The report should include the date of the denial of Lifeline service and the reason for the denial;
5. Virgin Mobile should report, within this docket, any changes in rates for its Lifeline offerings in Illinois. The report should include a description of the rate change;
6. Virgin Mobile should file, as reports within this docket on the dates it files such reports with the FCC, copies of any and all annual reports showing the number of subscribers de-enrolled for non-usage that it files with the FCC pursuant 47 C.F.R. § 54.405(e)(3);
7. Virgin Mobile should file, as reports within this docket on the dates it files such reports with the FCC, copies of any and all annual outage and general quality of service information that it files with the FCC pursuant 47 C.F.R. § 54.422(b);

8. Virgin Mobile should file, as reports within this docket on the dates its files such reports with the FCC, a copy of any and all audit reports filed with the FCC pursuant to 47 C.F.R. § 54.420(b);

9. Virgin Mobile should report, within this docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month:

- a. the number of Illinois wireless customers;
- b. the number of Illinois wireless non-Lifeline customers;
- c. the number of Illinois wireless Lifeline customers;
- d. the Illinois wireless non-Lifeline fraction.

10. Virgin Mobile should report, within this docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to WETSA; and

11. Virgin Mobile should report, within this docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to PW9SA.

(Virgin Mobile Ex. 2.0, 6:22, 7:1-2.)

V. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission approve Virgin Mobile's Petition for ETC status subject to the recommendations above.

Respectfully submitted,

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January 14, 2015